

STATE OF MICHIGAN
COURT OF APPEALS

In re BURGESS/LANSMAN/MILLER, Minors.

UNPUBLISHED
December 11, 2014

No. 321581
Wayne Circuit Court
Family Division
LC No. 13-512674-NA

Before: JANSEN, P.J., and TALBOT and SERVITTO, JJ.

PER CURIAM.

Respondent D. Lansman appeals by right the trial court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(i), (g), and (j). We affirm.

The children were removed from respondent's home after the oldest child, then nine years old, reported that respondent made her take her shirt and bra off and expose her breasts to a stranger who was viewing the activity on a webcam. Afterward, the stranger undressed and exposed himself to the child. After the court exercised jurisdiction over the child, respondent participated in reunification services.

Evidence indicated that respondent was involved in a sexually deviant lifestyle that involved the use of various sexual devices and Dominatrix activities. She lived with a transgender male who was often naked in front of the children. After the children were removed, they reported that respondent would sometimes "hogtie" them together, and would sometimes lock them in their rooms while she participated in her Dominatrix activities. While at a parenting class, respondent solicited another person to participate in a "threesome." The oldest child also reported that when she was eight year old, respondent penetrated the child's vagina with a sex toy.

Respondent initially explained that the webcam incident merely involved her effort to teach her child about "the birds and the bees." She later gave varying accounts of the incident, sometimes acknowledging that it happened and sometimes denying it altogether. She pressured her daughter to write a letter denying that the incident occurred. Respondent also denied ever using a sex toy on her daughter. Both respondent and the oldest child testified at the termination hearing. The trial court credited the child's testimony and found that respondent's testimony was not credible. It found that there was sufficient evidence to terminate respondent's parental rights under MCL 712A.19b(3)(b)(i), (g), and (j), and that termination of respondent's parental rights was in the children's best interests.

Respondent argues that the trial court erred by finding that the statutory grounds for termination were established by clear and convincing evidence, and by finding that termination of her parental rights was in the children's best interests. We disagree.

The petitioner has the burden of establishing at least one statutory ground for termination by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 351; 612 NW2d 407 (2000). A trial court's factual findings, including its ultimate determination that a statutory ground for termination has been proven, are reviewed for clear error. MCR 3.977(K). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). The trial court must find by a preponderance of the evidence that termination of the respondent's parental rights is in the children's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

MCL 712A.19b(3)(b)(i) permits a court to terminate parental rights under the following circumstances:

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

The oldest child testified regarding two separate incidents of sexual abuse or exploitation at the hands of respondent. Although respondent denied the allegations, the trial court specifically stated that it credited the child's testimony and discredited respondent's testimony. Regard is given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). Other evidence indicated that respondent allowed her deviant sexual lifestyle to affect her parental responsibilities. Respondent allowed her transgender male partner to walk naked in front of the children, locked the children in their rooms while she participated in Dominatrix activities, and propositioned another person at a parenting class to participate in a "threesome." Considering this evidence, the trial court's decision to credit the child's testimony regarding both the webcam incident and respondent's use of a sex toy on the child, and respondent's fluctuating denials of the webcam incident and failure to take responsibility for her actions, we conclude that the trial court did not clearly err by finding that the children were reasonably likely to be sexually abused in the foreseeable future if returned to respondent's home.

The trial court also found that termination of respondent's parental rights was warranted under MCL 712A.19b(3)(g) and (j), which permit termination under the following circumstances:

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be

able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Respondent argues that she was compliant with her treatment plan, but the evidence demonstrated that she failed to benefit from the services provided. Mere compliance with a treatment plan is insufficient to avoid termination. A parent must benefit from services and improve her parenting skills for the safety of her children. See *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005). Despite attending parenting classes and counseling, respondent refused to take responsibility for the sexual abuse inflicted on her oldest child; she was unable to understand how her conduct affected her children, particularly the oldest child, whom she pressured to falsely deny that anything inappropriate had occurred. Respondent was more interested in pursuing her deviant sexual lifestyle than protecting her children's interests. The trial court did not clearly err by finding that there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time considering the children's ages. Nor did the court err by finding that the children were reasonably likely to be harmed if returned to respondent's home.

We reject respondent's suggestion that petitioner failed to make reasonable efforts to reunify her with her children. "In general, petitioner must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights." *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). Respondent complains that petitioner did not refer her for a second set of parenting classes or more in-depth therapy. She also complains that petitioner was aware that she suffered from a mental illness and failed to provide any assistance to address that issue. The evidence indicated that respondent had been diagnosed with bipolar disorder, but was already receiving mental-health treatment for that disorder when this proceeding began. Respondent's treatment plan required that she maintain her ongoing mental-health regimen. Respondent does not explain what additional services should have been provided to address her mental illness. Further, contrary to respondent's assertion on appeal, petitioner's obligation to provide *reasonable* reunification services did not require it to provide additional referrals for parenting classes and therapy when those services had already been provided and respondent had already failed to benefit.

We also reject respondent's argument that termination of her parental rights was not in the children's best interests. In determining a child's best interests, a court may consider a variety of factors, including the child's bond with the parent, the respondent's parenting ability, the child's need for permanency, stability, and finality, the advantages of a foster home over the parent's home, and the possibility of adoption. The court may also consider the respondent's history, psychological evaluation, and parenting techniques. *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014); *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012); *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

Although respondent did complete certain requirements of her treatment plan, she failed to demonstrate that she had sufficiently benefitted from the services specifically targeted to address the primary basis for the children's adjudication, sexual exploitation and abuse. The trial court did not clearly err by finding that the oldest child had been sexually abused and sexually exploited at the hands of respondent. The evidence indicated that the children's bond with respondent was not strong. One child had been placed with the child's father and the other two children with grandparents. All three children were doing well in their placements. Testimony also indicated that termination of respondent's parental rights was preferable over a guardianship in order to provide the children with stability and permanency. The trial court did not clearly err by finding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Kathleen Jansen
/s/ Michael J. Talbot
/s/ Deborah A. Servitto